112-733

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 520.

THE SAINT PAUL AND DULUTH RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 20, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 I. *Petition. Filed January* 20, 1881.

In the Court of Claims. December Term, 1880.

THE SAINT PAUL and DULUTH RAILROAD COMPANY
versus
THE UNITED STATES. } No. 12403.

To the Honorable Chief Justice and Justices of the Court of Claims:

The plaintiff, your petitioner, "The Saint Paul and Duluth Railroad Company," respectfully represents:

That it is a corporation, duly incorporated under the laws of the State of Missouri, with its principal office of business at Saint Paul, Minnesota, and that it is the successor to the "Lake Superior and Mississippi Railroad Company," a corporation formerly existing under the laws of the State of Minnesota.

That the first day of July, 1875, and from that date until the — day of June, 1877, the said "Lake Superior and Mississippi Railroad Company" was the owner and operator of a certain railroad and its equipments, extending from Saint Paul to Duluth, in the State of Minnesota, a distance of one hundred and fifty-six miles, and that on and after the first day of July, 1875, aforesaid, the said last-mentioned company, regularly transported the United States mails upon its trains, over the said road. And on the eighth day of Octo-
2 ber, 1875, the Postmaster General of the United States, on behalf of the United States, entered into a written contract with the said last-mentioned company, for the transportation of the said mails over the said railroad, between Saint Paul and Duluth aforesaid, a duly certified copy of which contract is attached to and made a part of this petition, and marked "Exhibit A."

And your petitioner further represents that the said last-mentioned company faithfully kept and performed each and all of the conditions in the said contracts to be kept and performed on its part, and did, from the said first day of July, 1875, up to and until the 7th day of June, 1877, faithfully convey the mails upon the said route, in all respects as required by the terms of the said contract.

And that from and after the said seventh day of June, 1877, your petitioner, as the successor of the said last-mentioned company, faithfully performed each and all of the conditions in the said contract, and faithfully conveyed the mails upon the said route in all respects as required by the terms of the said contract up to and including the 30th day of June, 1879.

And your petitioner avers that the Postmaster General never discontinued or curtailed the said service in whole or in part during the existence of the said contract, or notified either of the said railroad companies that he desired so to do, or that the public interests in his judgment required such discontinuance or curtailment for any cause.

And your petitioner further represents that by virtue of a decree made by the circuit court of the United States for the district of Minnesota, on the eighth day of March, A. D. 1877, and the proceedings thereunder, duly confirmed by order of said court, the said

railroad and the franchises, and all the rights, credits, choses in action, contracts, claims, and property of every description of the said "Lake Superior and Mississippi Railroad Company" were sold, and became the property of your petitioner on the seventh day of June, A. D. 1877, as by reference to a transcript from the
3 records of the said court duly attested, and which your petitioner will produce as this honorable court shall direct will more fully appear.

And your petitioner thereby became the successor to the said "Lake Superior and Mississippi Railroad Company," entitled to the benefits and subject to the liabilities of its existing contracts.

And your petitioner further represents that there is justly due to your petitioner, on account of the transportation of the mails under the said contract, the sum of twelve thousand one hundred and forty-one dollars and thirty-eight cents ($12,141.38), which has been wrongfully and unjustly retained by the Postmaster General, who claimed the right under the provisions of the act of Congress of July 12, 1876, entitled "An act making appropriations for the service of the Post Office Department," etc., to reduce the compensation for the transportation of the mails under said contract, and without the consent of the said "Lake Superior and Mississippi Railroad Company," or your petitioner, did reduce said compensation from the amount provided in the said contract, from the first day of July, 1876, up to the close of said contract term, at the rate of three thousand eight hundred and eighty dollars and eighty-one cents ($3,880.81) per annum.

And a still further reduction from the first day of July, 1878, to the 30th day of June, 1879, of the sum of four hundred and ninety-eight dollars and ninety-five cents ($498.95), making a total wrongful reduction of the said sum of twelve thousand one hundred and forty-one dollars and thirty-eight cents ($14,141.38), which sum your petitioner alleges is justly due to your petitioner from the United States, after allowing all just credits and offsets, and that no assignment or transfer of said claim, or any part thereof or interest therein, otherwise than as herein stated, has ever been made; where-
4 fore your petitioner prays that a judgment may be rendered in its favor for the said amount.

J. F. FARNSWORTH,
Attorney for Claimant.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

H. H. Porter, being duly sworn, doth depose and say: That he is the prdsident of the said company, the complainant; that he is acquainted with the statements and facts set forth in the foregoing petition, and that he believes the same to be true.

H. H. PORTER.

Sworn to and subscribed before me, this 13th day of January, A. D. 1881.

J. A. SWENSON,
Notary Public, Ramsey County, Minnesota.

NOTE.—The post office address of claimant is St. Paul, Min.; that of its attorney is Washington, D. C.

5 POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *January 19th*, 1881.

I, James N. Tyner, Acting Postmaster General of the United States of America, certify that the annexed is a true copy of the original contracts now on file in this Department.

In testimony whereof, I have hereto set my hand, and caused the seal of the Post Office Department to be affixed at the city of Washington, the day and year above written.

[L. S.] JAS. N. TYNER,
Acting Postmaster General.

UNITED STATES OF AMERICA, *St. Paul, Ramsey Co., Minn.:*

Contract for Railroad Mail Service.

No. 26007. $13,859.97 per annum.

This article of contract, made the eighth day of October, in the year one thousand eight hundred and seventy-five, between the United States of America (acting in this behalf by the Postmaster General,) and the Lake Superior and Mississippi Railroad Company, by J. P. Ilsley, its president, and William Dawson and John B. Cook, as sureties—

Witnesseth, That whereas the said railroad company has been accepted according to law, as contractor for conveying the mail on route No. 26007, from St. Paul C. H. (Minn.) by White Bear Lake, Centreville Sta. (local), Forest Lake, Wyoming, North Branch Sta., Harris, Rush City, Rock Creek, Pine City, Hinkley, Kettle River Sta., Moose Lake, Barnum (n. o.) Junction, Thompson, Fond-du-Lac, Oneyta, and Rice's Point to Duluth and back, by railroad, 12 times a week, from May 1st to October 31st, and 6 times a week the residue of the year, or as much oftener as trains may run, by a

6 schedule satisfactory to the Department, at thirteen thousand eight hundred and fifty-nine and ninety-seven one-hundredths dollars per year, (being at the rate of $89 per mile per annum,) for and during the term beginning July first, eighteen hundred and seventy-five, and ending June thirty, eighteen hundred and seventy-nine:

Now, therefore, the said Lake Superior and Mississippi Railroad Company, as contractor, and the said William Dawson and John B. Cook as sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves—

1st. That the mail (including British, Canada, and other foreign mails) shall be conveyed in a secure and safe manner, free from wet

or other injury, in a separate and convenient car, or apartment of a car, suitably fitted up, furnished, warmed, and lighted, under the direction of the Post Office Department, and to the satisfaction of the Postmaster General, or of his authorized agent, at the expense of the contractor, for the assorting and safe keeping of the mails, and for the exclusive use of the Department and its mail agent, if the Department shall employ such agent; and such agent is to be conveyed free of charge. When there is no agent of the Department the railroad company shall designate a suitable person upon each train, to be sworn, to receive and take charge of the mails and of waybills, accompanying and describing them, and duly deliver the same. And the mail shall be taken from and delivered into the post offices at the ends of the route; and also from and into the intermediate offices on the route, or that may hereafter be established on the route, provided the latter are not over one-quarter of a mile from a depot or station, or from the railroad track when no station has been established.

2d. That if the company shall run a regular train of passenger cars more frequently than is required by the contract to carry
7 the mail, the same increased frequency shall be given to the mail, and without increase of compensation, and the like as to the increase speed of the mail trains, if desired by the Postmaster General.

3d. That the company shall convey, free of charge, all mail-bags post office blanks, and also all accredited special agents of the Department, on exhibition of their credentials.

4th. That the company shall not, by itself, nor by its agents, transmit, nor be concerned in transmitting commercial intelligence more rapidly than by mail, nor carry out of the mail any letters not inclosed in postage stamped envelopes, except such as may have relation solely to some article at the same time conveyed.

5th. That in every case of failure to perform the trip (unless it is shown that the same was not caused by misconduct, neglect, or want of proper skill) there may be a forfeiture of the pay for the trip, and a failure to arrive at the end of the route, so as to lose the connection with a depending mail, shall be considered as equal to a whole trip lost, unless the detention or delay be the result of unavoidable causes.

6th. That the company shall be subject to fine for failure to take or deliver a mail, or any part of a mail; for suffering the mail to be wet or otherwise injured, or lost, or destroyed, unless it shall appear that such failure, or other incident, as aforesaid, was not caused by misconduct, neglect, or want of proper skill on the part of the company or its officers.

7th. That the company shall be answerable for the adequacy of the means of transportation, for the faithfulness, ability, and diligency of its agents, and for the safety, due receipt, and delivery, as aforesaid, of the mails.

8th. That the company will collect quarterly, if required by the Postmaster General, of postmasters on the route the balances due from them to the United States on their quarterly returns,
8 and faithfully render an account thereof to the Postmaster

General in the settlement of its quarterly accounts, and will pay over to the Auditor of the Treasury for the Post Office Department, on the order of the Postmaster General, all balances remaining in its hands.

9th. That the Postmaster General may discontinue or curtail the service, in whole or in part, whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any cause; he allowing, as a full indemnity to the contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the amount of service retained and continued.

10th. The said United States covenant with the said company to pay as aforesaid, at the rate aforementioned, quarterly, in the months of November, February, May, and August, or in the preceding months at the option of the Department.

Provided always that this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed the twenty-first day of April, in the year one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature, and the said railroad company, by its president and sureties, have hereunto set their hands and seals the day and year set opposite their names respectively.

Signed, sealed, and delivered by the Postmaster General in the presence of—

J. N. DORRIS.

MARSHALL JEWELL,
Postmaster General.

9 And by the other parties hereto in the presence of—

PHILIP S. HARRIS,
CHAS. F. CRUFT,
Witnesses.

Attest: [SEAL.] THOS. M. DAVIS, *Secretary.*

October 18, 1875.

LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY.

Signed this 18th day of Oct., 1875, by
I. P. ILSLEY, *Pres't.* (Affix seal of Co.)

The officer who signs for the company should add his title on the line below.

Signed this 18th day of Oct., 1875.

Signed this 18th day of Oct., 1875.

WILLIAM DAWSON, [SEAL.]
JNO. B. COOK, [SEAL.]
Sureties.

POST OFFICE, ST. PAUL, MINN., *October 18th*, 1875.

I hereby certify that in my judgment William Dawson and John B. Cook are good and sufficient sureties for the amount of the foregoing contract.

DAVID DAY, *Postmaster.*

10 II. *Traverse. Filed March* 14, 1881.

And now comes the Attorney General on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Ass't Att'y General.

11 III. *Findings of Fact and Conclusion of Law. Filed April* 23, 1883.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

On the 8th day of October, 1875, the Lake Superior and Mississippi Railroad Company, a corporation created under the laws of the State of Minnesota, entered into the following contract with the defendants:

UNITED STATES OF AMERICA, *St. Paul, Ramsey Co., Minn.:*

Contract for Railroad Mail Service.

No. 26007. $13,859.97 per annum.

This article of contract, made the eighth day of October, in the yeae one thousand eight hundred and seventy-five, between the United States of America (acting in this behalf by the Postmaster General) and the Lake Superior and Mississippi Railroad Company, by J. P. Ilsley, its president, and William Dawson and John B. Cook, as sureties, witnesseth:

That whereas the said railroad company has been accepted, according to law, as contractor for conveying the mail on route No. 26007, from St. Paul, c. h. (Minn.), by White Bear Lake, Centreville Sta. (local), Forest Lake, Wyoming, North Branch Sta., Harris, Rush City, Rock Creek, Pine City, Hinkley, Kettle River Sta., Moose Lake, Barnum (N. O.) Junction, Thomson, Fond du Lac, Onevta, and Rice's Point to Duluth and back, by railroad 12 times a week, from May 1st to

October 31st, and 6 times a week the residue of the year, or as much oftener as trains may run, by a schedule satisfactory to the Department at thirteen thousand eight hundred and fifty-nine and ninety-seven one-hundredths dollars per year (being at the rate of $89 per mile per annum), for and during the term beginning July first, eighteen hundred and seventy-five, and ending June thirty, eighteen hundred and seventy-nine.

Now, therefore, the said Lake Superior and Mississippi Railroad Company, as contractor, and the said William Dawson and John B. Cook, as sureties, do, jointly and severally, undertake, covenant, and agree with the United States, and do bind themselves—

1st. That the mail (including British, Canada, and other foreign mails) shall be conveyed in a secure and safe manner, free from wet or other injury, in a separate and convenient car, or apartment of a car, suitably fitted up, furnished, warmed, and lighted, under direction of the Post Office Department, and to the satisfaction of the Postmaster General, or of his authorized agent, at the expense of the contractor, for the assorting and safe keeping of the mails, and for the exclusive use of the Department and its mail agent, if the Department shall employ such agent; and such agent is to be conveyed free of charge. When there is no agent of the Department, the railroad company shall designate a suitable person upon each train, to be sworn, to receive and take charge of the mails, and of way-bills, accompanying and describing them, and duly deliver the
12 same. And the mail shall be taken from and delivered into the post offices at the ends of the route; and also from and into the intermediate offices on the route, or that may hereafter be established on the route, provided the latter are not over one-quarter of a mile from the depot or station, or from the railroad track when no station has been established.

2d. That if the company shall run a regular train of passenger cars more frequently than is required by the contract to carry the mail, the same increased frequency shall be given to the mail, and without increase of compensation, and the like as to the increase speed of the mail trains, if desired by the Postmaster General.

3d. That the company shall convey, free of charge, all mail bags and post-office blanks, and also all accredited special agents of the Department, on exhibition of their credentials.

4th. That the company shall not, by itself, nor by its agents, transmit, nor be concerned in transmitting commercial intelligence more rapidly than by mail, nor carry out of the mail any letters not inclosed in postage-stamped envelopes, except such as may have relation solely to some article at the same time conveyed.

5th. That in every case of failure to perform the trip (unless it is shown that the same was not caused by misconduct, neglect, or want of proper skill) there may be a forfeiture of the pay for the trip; and a failure to arrive at the end of the route, so as to lose the connection with a depending mail, shall be considered as equal to a whole trip lost, unless the detention or delay be the result of unavoidable causes.

6th. That the company shall be subject to fine for failure to

take or deliver a mail, or any part of a mail; for suffering the mail to be wet or otherwise injured, or lost, or destroyed, unless it shall appear that such failure, or other incident, as aforesaid, was not caused by misconduct, neglect, or want of proper skill on the part of the company or its officers.

7th. That the company shall be answerable for the adequacy of the means of transportation; for the faithfulness, ability, and diligence of its agents; and for the safety, due receipt and delivery, as aforesaid, of the mails.

8th. That the company will collect quarterly, if required by the Postmaster General, of postmasters on the route the balances due from them to the United States on their quarterly returns, and faithfully render an account thereof to the Postmaster General in the settlements of its quarterly accounts, and will pay over to the Auditor of the Treasury for the Post Office Department, on the order of the Postmaster General, all balances remaining in its hands.

9th. That the Postmaster General may discontinue or curtail the service, in whole or in part, whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any cause; he allowing, as a full indemnity to the contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the amount of service retained and continued.

10th. The said United States covenant with the said company to pay, as aforesaid, at the rate aforementioned, quarterly, in the months of November, February, May, and August, or in the preceding months, at the option of the Department.

Provided always, that this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress, passed the twenty-first day of April, in the year one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature; and the said railroad company, by its president and sureties, have hereunto set their hands and seals the day and year set opposite their names, respectively.

Signed, sealed, and delivered by the Postmaster General in the presence of—

J. N. DORRIS.

MARSHALL JEWELL,
Postmaster General.

And by the other parties hereto in the presence of—

PHILIP S. HARRIS,
CHAS. F. CRUFT,
Witnesses.

Attest:

[SEAL.] THOS. M. DAVIS, *Secretary.*

October 18, 1875.

LAKE SUPERIOR AND MISSISSIPPI
RAILROAD COMPANY.

Signed this 18th day of Oct., 1875, by—

I. P. ILSLEY, *Pres't.*

(Affix seal of Co.)

13 II.

The following circulars were sent on the days of their respective dates by the Second Assistant Postmaster General:

Reduction of Pay for Mail Service on Land-Grant Railroads, under Act of Congress of July 12, 1876.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
WASHINGTON, D. C., *Oct.* 20, 1876.

SIR: The act of Congress entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes," approved July 12, 1876, section 1, contains the following proviso, namely:

"*Provided*, That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-six, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails ten per centum per annum from the rates fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes,' approved March third, eighteen hundred and seventy-three, for the transportation of mails on the basis of average weight."

The same act also contains the following section:

"SEC. 13. That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct, shall receive only eighty per centum of the compensation authorized by this act."

Consequently for mail service performed on and after July 1, 1876, on your road, route 26007, between St. Paul and Duluth, the compensation will be reduced from $13,859.97 per annum (the amount warranted by the latest returns under the act of March 3, 1873) to $11,087.97 per annum. The reduction amounting to $2,772 per annum is due to the thirteenth section of the act of July 12, 1876, above quoted.

Very respectfully,

THOS. J. BRADY,
Second Ass't Postmaster General.

To GEO. H. SMITH,
St. Paul, Minn.

(No. 43.)

Readjustment of Pay for Mail Service on Railroad Routes, under Act of Congress of June 17, 1878.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASS'T POSTMASTER GENERAL,
WASHINGTON, D. C., *Aug.* 28, 1878.

SIR: The act of Congress making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes, approved June 17, 1878, contains the following proviso, namely:

"That the Postmaster General be; and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-eight, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails five per centum per annum from the rates for the transportation of mails on the basis of the average weight fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes,' approved July twelfth, eighteen hundred and seventy-six."

Therefore, please take notice that the Auditor of the Treasury for this Department has been directed to decrease the pay of your company for the conveyance of the mails on route 26007, between St. Paul and Duluth, from July 1, 1878, to June 30, 1879, $498.96 per annum, leaving the pay from the first-named date $9,480.21 per annum, being a reduction of five per centum from the rates fixed for weight of mails, in accordance with the provision of the act of June 17, 1878, above quoted.

Very respectfully, your obedient servant,

THOS. J. BRADY,
Second Ass't Postmaster General.

To G. H. SMITH, Esq.,
Supt., Saint Paul, Minn.

14 III.

The amount deducted from the compensation for the transportation of the mails on this route from July 1, 1876, to June 30, 1879, under act of July 12, 1876, was $11,642.40; the amount deducted from July 1, 1878, to June 30, 1879, under act of June 17, 1878, was $498.96, making a total of $12,141.36. Of the said sum of $12,141.36 there was deducted $3,686.76 prior to June 12, 1877, and $8,454.60 after that day.

IV.

To secure payment of certain indebtedness, the said Lake Superior and Mississippi Railroad Company, on the 1st January, 1869, executed a deed of trust, of which the following is an abstract:

This indenture, made this first day of January, anno Domini one

thousand eight hundred and sixty-nine (1869), between the Lake Superior and Mississippi Railroad Company, a corporation created by and existing under the laws of the State of Minnesota, party of the first part, and J. Edgar Thomson and William G. Moorhead, of the city of Philadelphia and State of Pennsylvania, parties of the second part.

Whereas, * * * (P. 18.)

Now this indenture witnesseth that the party of the first part, in consideration of the premises, and of one dollar to it in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid issued or to be issued as herein recited and provided, and every part of the said principal and interest, as the same shall become payable according to the tenor of said bonds, and of the coupons or interest warrants thereto attached, has granted, bargained, and sold, assigned, set over, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and transfer, assign, set over, release, convey, and confirm, unto the parties of the second part all the right, title, interest, claim, or demand whatsoever which the party of the first part now has or which it shall or may at any time hereafter acquire or become entitled to, of, in, and to all those lands or sections of land so as aforesaid granted in and by said acts of Congress of the United States of America and in and by said acts of the Legislature of the State of Minnesota, and every of them, for the purpose of aiding in the construction of a railroad from Saint Paul to Lake Superior as aforesaid, being seventeen sections, or ten thousand eight hundred and eighty acres for each mile, amounting in the aggregate to one million six hundred and thirty-two thousand acres of land, be the same more or less, and situated in the present State of Minnesota, adjoining and adjacent to the line of railroad of the said party of the first part as hereinbefore described, in aid of construction, equipment, or completion of said railroad, full lists of which will be appended to this instrument as said lands are surveyed, selected, and certified, which said lists are to be signed by the president of said company and to be taken and considered as part and parcel of this deed, without reference to the dates of said lists. Also all and singular the railroad of the party of the first part constructed or to be constructed upon or over the line or route hereinbefore designated, viz., from Saint Paul to the waters of Lake Superior, and also all the lands, tenements, and hereditaments, acquired or appropriated, or which may hereafter be acquired or appropriated, for the purpose of a right of way for the said railroad, or any continuation or portion thereof, and all the easements and appurtenances thereunto belonging or in anywise appertaining, and all railways, ways, and rights of ways, depot grounds, and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures, all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, warehouses, machine-shops, work-shops, superstructures, erections, and fixtures, whether now held or hereafter at any time acquired for the use of the said railway, or in connection therewith, or the business thereof; also all locomotives,

tenders, cars, and other rolling-stock, or equipment, and all machinery, tools, implements, fuel, and materials for constructing, operating, repairing, or replacing said railway or any part thereof, or convenient or necessary for use in connection therewith, together with all equipments or appurtenances, whether now held or hereafter acquired, and also all franchises connected with or relating to said railway and said line of telegraph, or the construction, maintenance, or use thereof, now held or hereafter acquired by the party of the first part, and all corporate franchises of any nature, including the franchise to be a corporation, which are now or may hereafter be possessed or exercised by the party of the first part, together with all and singular the endowments, income, and advantages, tenements, hereditaments, and appurtenances to the above-mentioned lands, railroad, or property belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, toil, income, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, present or prospective, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances, subject nevertheless to the provisions of the acts of Congress of the United States and of the State of Minnesota as aforesaid.

V.

On the 8th of March, 1876, a bill was filed in the circuit court of the United States for the district of Minnesota praying a foreclosure of all right and equity of redemption in and to the premises and property set forth in the deed aforesaid; whereupon it was decreed, among other things, as follows:

GEORGE PHILLER and STEPHEN A. CALDWELL, Trustees, Citizens of the State of Pennsylvania, Plaintiffs,

against

THE LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY, EDWARD RICE and WILLIAM DAWSON, as Trustees, Citizens of the State of Minnesota, and THE NORTHERN PACIFIC RAILROAD COMPANY, a Citizen of the State of New York, Defendants.

Final Decree.

This cause having been duly brought on for hearing upon the bill of complaint of the said plaintiffs, the several answers of the said defendant, The Lake Superior and Mississippi Railroad Company, and of Edmund Rice and William Dawson, and the Northern Pacific Railroad Company, and upon the exhibits and testimony, * and the same being argued by counsel, and the court now being fully advised in the premises, doth find that the equities of the case are with the plaintiffs, and further find that the said defendant, The Lake Superior and Mississippi Railroad Company, did, by authority of law, on the 1st day of January, A. D. 1879, make, execute, and

deliver the said trust deed in said bill of complaint named, and of which exhibit to said bill is a correct copy. * * *

* * * [P. 119.]

And it appearing to the court to be for the benefit of all parties interested in the said mortgaged premises that the same should be sold, it is therefore, now, viz., the 8th day of March, 1877, on motion of counsel for plaintiffs, and by consent of such of said several defendants now in court, given by their said solicitors, ordered, adjudged, and decreed by this court that the said defendant, The Lake Superior and Mississippi Railroad Company, pay or cause to be paid to the said complainants, as trustees for the holders of said bonds and coupons, the several sums of money, with interest thereon, as hereinbefore proved to be due and owing, to wit, the said sum of five millions seven hundred and seventy-one thousand two hundred and sixty dollars and fifty-five cents ($5,771,260.55) in gold coin, within thirty days from and after the entry of this decree, and in default thereof that all and singular the said mortgaged premises, property, rights, telegraph lines, immunities, and franchises hereinbefore and in said bill of complaint described and enumerated be sold at public auction.

* * * [P. 121.]

That the same be sold in one parcel and as an entire property, to the highest and best bidder therefor, unless said corporation, The Lake Superior and Mississippi Railroad Company, or other defendants, shall, prior to the day appointed for such sale, pay the full amount of principal and interest so found due as aforesaid upon said first mortgage bonds and coupons, with the accruing interest, in gold coin of the United States, together with the costs and expenses of this suit hereinafter adjudged to be paid, including the expenses of advertisement and other proceedings to effect such sale; that the right and equity of redemption of the said defendants, and each of them, and of all persons claiming by, through, or under them, or either of them, shall be absolutely foreclosed and barred, and the said property shall, in case of non-payment as aforesaid, within the time aforesaid, be sold absolutely and without redemption, and free from any alleged right of redemption under the laws of Minnesota or otherwise, to the highest and best bidder.

* * * [P. 123.]

It is further ordered that said sale be made in accordance with the provisions aforesaid, and that the same be reported to this court for such other order, decree, and proceeding as to this court shall seem meet and as to equity may pertain; and this cause stands continued and for further directions.

16 VI.

The master in chancery made sale of the same to William H. Rhawn, Edwin M. Lewis, George Whitney, Nathan Hilles, Frederick R. Shelton, Edwin A. Rawlins, and Fisher A. Baker, which sale was on the 12th day of June, 1877, confirmed by the court. The purchase so made by William H. Rhawn and others was in trust for the use and benefit of such of the bondholders, creditors, and stock-

holders of said company as had in that behalf agreed or were entitled to participate in the benefits thereof by becoming parties to the plan of sale, purchase, and reorganization, upon the terms prescribed by the laws of the State of Minnesota; and thereupon, in accordance with the laws of Minnesota, said purchasers organized themselves, on the 27th June, 1878, into the corporation plaintiff, and conveyance was made to the plaintiffs of the property and estate so purchased by said trustees.

VII.

Up to the 27th June, 1877, service on route No. 26007 was performed by the Lake Superior and Mississippi Railroad Company, and after that date by plaintiff.

The whole of the required service was performed, with the exception of a casual failure in 1876, for which a deduction of $33.19 was made.

Conclusion of Law.

On the foregoing facts the court decides as conclusion of law, for reasons stated in the opinion, that the claimants' petition must be dismissed.

IV. *Opinion of the Court.*

DAVIS, J., delivered the opinion of the court:

This case has two branches, with quite distinct questions of law for decision.

I. On the 8th of October, 1875, the Postmaster General made a contract with the Lake Superior and Mississippi Railroad Company for the transportation of mails during a term of four years, which contract contained the following provision:

9th. That the Postmaster General may discontinue or curtail the service in whole or in part whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any cause; he allowing as a full indemnity to the contractor one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the amount of service retained and continued.

After the passage of the act of July 12, 1876 (19 Stat. L., 79), the compensation paid to the company for the service was reduced in conformity with its provisions. In June, 1877, the Lake Shore and Mississippi railroad and rolling stock and the other property and franchises of the company were sold under a decree for the foreclosure of a mortgage, and were purchased by trustees for the benefit of such bondholders, stockholders, and creditors as had combined together for the purchase. The purchasers organized themselves together into the corporation which is the plaintiff in this suit, and received conveyance of the property and estate sold under the decree. Among the property thus sold and assigned was the claim for the reduction in the pay for the service under the contract. That claim amounted at the date of the sale to $3,686.76. This claim constitutes the first branch of the case.

17 The defendants first contend that the Postmaster General was authorized by the act of 1876 to make these reductions

in the pay for the service, and that therefore the Lake Superior and Mississippi Railroad Company had no just claim for amounts thus reduced and detained which could be assigned to the claimants.

In the case of the Illinois Central Railroad Company, decided at the present term, this question was raised and decided by us adversely to the Government, in conformity with the rulings of the Supreme Court in the cases of the Chicago and Northwestern Railway Company (104 U. S. R., 680) and the Chicago, Milwaukee and Saint Paul Railway Company (104 U. S. R., 687). The opinion of the court in that case is made part of the opinion in this one (printed at the end), in order to explain why we must now hold against the defendants on this point.

The defendants also contend that this assignment is within the prohibition of Revised Statutes, section 3477. This section, which has often been construed by the courts, provides that—

All transfers and assignments made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

This statute, enacted in 1846 and in 1853 for the protection of the Treasury, was found in practice to be sometimes harsh and frequently onerous. Parties tried to evade it, and invoked the aid of the courts in their efforts. Finally, in 1877, it received an elaborate and carefully considered construction from the Supreme Court in Gillis' case (95 U. S. R., 407). The court says of the acts of 1846 and 1853:

So far are they from giving new potency to assignments and transfers of rights in action, so far from changing the common-law rule that such rights are not assignable, the statute strikes down and denies any effort to powers of attorney, orders, transfers, and assignments, which before were good in equity, and which a debtor was bound to regard when brought to his notice. * * * It is an unwarrantable assumption to set up that Congress had in mind only claims presented to the Treasury Department. When the act was passed many claims were presented to Congress, and a vast number were set up by way of defalcation in suits brought by the Government, where there was a full opportunity to cross-examine the witnesses called in their support. That Congress had all such claims in view and intended to prevent their assignment and debar any assignee from setting them up, is, we think, altogether probable. * * * It must be admitted that the act (of 1855, establishing the Court of Claims) contemplates the possibility of an effective assignment of some claims. What those are it is not necessary now to determine. Even the act of 1853 excepted from its sweeping provisions certain claims which were liquidated, and for which warrants were drawn. * * * That the act creating the Court of

Claims did not work a repeal of any provisions of the act of 1853, nor itself make claims assignable that were incapable of assignment before its enactment, is beyond reasonable doubt. At most it suggests that claims which are assignable may be sued in the Court of Claims in the name of the assignee, without undertaking to declare what claims may be assigned. That there may be such claims is clearly stated in the act of 1853, and there are devolutions of title by force of law, without any act of parties, or involuntary assignments, compelled by law, which may have been in view.

In Erwin's case (97 U. S. R., 392) the court gave a further intimation of its views as to the classes of claims which were assignable, notwithstanding the act of 1853. It said:

The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the Gillis case, applies only to cases of voluntary assignment of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of the law. The passing of claims to heirs, devisees, or assignees in bankruptcy are not within the evil at which the statute aimed; nor does the construction given by this court deny to such parties a standing in the Court of Claims.

18 An opportunity was offered to the court in Spofford *v.* King (97 U. S. R., 484) to express its views further upon the class of claims within the operation of the statute, and it held not only that the attempted assignment was void as against the United States, but that it was void as between the parties. It said:

We cannot say that when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void; that they are valid and effective as between the parties thereto, and only invalid when set up against the Government.

Nevertheless, at the same term the court did give effect to an assignment, so far as to sustain a partial payment made at the Treasury to an assignee (McKight's case, 98 U. S. R., 179); and it is worthy of remark that a subsequent case in this court, Hart's case (16 C. Cls. R., 459), shows conclusively that the transaction whose validity was sustained by the court in McKnight's case was a fraud, and was the very evil which the statute was framed to prevent.

In the case of Goodman *v.* Niblack (102 U. S. R., 556), it appeared that the plaintiff claimed under a general assignment by one Sloo for the benefit of creditors, and that among Sloo's assets was a claim against the Government which had been paid to Niblack as the administrator *de bonis non* of Sloo. This assignment was sustained by the court, which says:

In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor, of all his effects, which must, if it be honest, include a claim against the Government,

differ from the assignment which is made in bankruptcy? There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment.

Burke's case (13 C. Cls. R., 231) was decided in this court at the same term in which Erwin's case (13 C. Cls. R., 49) was decided here, the decision in which was affirmed above, as already noted. In Burke's case there were two claimants under assignments, one under an assignment made for good consideration before bankruptcy, the other under an assignment in bankruptcy. We held that the assignment prior to the bankruptcy was void under the statute, but upheld the assignment in bankruptcy.

From these cases we deduce the general principle that in all proceedings to which the United States are a party the courts are to maintain the statute in its integrity, as voiding all assignments of claims against the United States made before the issuing of a warrant for payment except such as are made in a general transfer of the claimants' property by operation of law, or by a voluntary transfer of all the claimants' property honestly made by him for the benefit of all his creditors. That is the extent to which the Supreme Court has thus far, in the interest of equity and good conscience, lent itself to modifications of the stringent provisions of the law originally enacted in 1846, 9 Stat. L., 41; re-enacted in 1853, 10 Stat. L., 170, and again re-enacted in the Revised Statutes in 1874.

The question which presents itself to the court in this branch of the case is this: Is a transfer under a decree for the foreclosure of a mortgage, and a sale for the benefit of mortgage creditors, and a transfer to a reorganization composed of mortgage bondholders, other creditors, and stockholders entitled to the equities which induced the Supreme Court to take out of the operation of the statute a voluntary assignment by a debtor for the benefit of all his creditors?

19 On this point the judges who take part in this decision are not agreed. Inasmuch as the act of June 23, 1874, 18 Stat. L., 252, makes the concurrence of three judges necessary to the decision of any case, and the claimants have failed to convince the three judges who heard the case that the transfer in question is not such an assignment as is made invalid by the Revised Statutes, therefore the court, in order to afford an opportunity for presenting this question to the higher court, are against the claimants on this branch of the case.

II. The claimants after the transfer of the railroad to them continued to perform the service for the remainder of the contract term. The defendants continued to make deductions from the contract price in conformity with the act of 1876 up to the 30th June, 1878, and after and until the end of the contract term in conformity with the provisions of the act of 1876 and of the further provisions of the act of June 17, 1878, 20 Stat. L., 140. These reductions amounted to $8,454.60, and the claim for them constitutes the second branch of the claimants' case.

The defendants contend—

1st. That the claim is invalid by reason of the acts of 1876 and 1878, which we dispose of as we disposed of the similar claim under the first branch of the case.

2d. That the assignment annulled the contract, leaving the claimants, as mail carriers, subject to the operation of the acts of 1876 and 1878. In support of this contention reference is made to section 3737 of the Revised Statutes. That section reads as follows:

SEC. 3737. No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred so far as the United States are concerned.

There are no equities in this case to induce a court to say that a statute which says that an assignment of a contract shall cause its annulment means that it shall occasionally cause its annulment. The claimants made no time contract with the United States which courts must support against the manifest will of Congress. On the contrary, they are seeking to exact from the Government a rate of pay which the statute forbids, and invoke in support of their claim the benefit of a contract with another party, which they have received in assignment in violation of the express provisions of the statute.

It is not necessary in so plain a case to go behind the statute and inquire why Congress enacted it; but if we should do so there would be no difficulty in finding reasons of the highest public importance why Congress should wish to give to the Executive absolute control over the personnel of contractors, and should not leave it subject to have its contracts assigned to persons with whom it would not originally have contracted.

For this reason we decide unanimously against the claimants on the second branch of their case.

The judgment of the court is that the claimants' petition be dismissed.

DRAKE, C. J., was not present at the hearing of this case, and takes no part in its decision.

20 THE ILLINOIS CENTRAL RAILROAD COMPANY

v.

THE UNITED STATES.

DAVIS, J., delivered the opinion of the court.

It is admitted that this case differs in no material respect from the cases of the Chicago, Milwaukee & St. Paul Railway Company, decided by this court at the December term, 1878 (14 C. cls. R., 125), as supplemented by the Chicago & Northwestern Railway Company's case, decided at the December term, 1879 (15 C. Cls. R., 232); both reversed by the Supreme Court for errors of law (104 U. S. R., 680 and 687.)

The counsel for the Government, in explanation of the request for a rehearing on the points settled in those cases, presents with his brief the following letter from the Postmaster General:

POST OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER GENERAL,
WASHINGTON, D. C., *March* 30, 1882.

HON. S. F. PHILLIPS,
Acting Attorney General, Washington, D. C.

SIR: * * I have read the opinion of that court, as delivered by Mr. Justice Matthews (Chicago and Northwestern Railway Company). The briefs in the case I have not seen; but I venture to submit for your consideration one comment upon the opinion of the court.

That opinion assumes that the Postmaster General was authorized by the act of 1872 to contract with any railroad company, whether a land-grant road or another, for carrying the mails; that being so authorized he did contract with the Chicago and Northwestern company in 1875, and that having so contracted, Congress could not by act change the terms of the contract in 1876.

Unless the point was considered by the court, I venture to doubt whether the Postmaster General had any authority whatever to contract with any land-grant road. The same act, the same breath, which authorized the Postmaster General to make contracts with railway companies affirmed also the duty of land-grant roads to carry mails at prices fixed by Congress. (See sections 214 and 265, Chap. 335, of the laws of 1872.)

It does not seem to me quite reasonable to hold that Congress, at the same time it affirms the duty of that class of roads to carry mails, upon prices fixed by Congress, should authorize the Postmaster General to annul or abrogate that power by a contract of his own.

I am, very respectfully, your obedient servant,

T. O. HOWE,
Postmaster General.

Each of the cases referred to received the assent of all the members of this court after careful examination and consultation; and each was reversed in the court above with equal unanimity. As the Postmaster General seems to question the result reached, a proper respect for that officer calls upon us to re-examine our own action in order to determine whether the points he now raises were not considered by us, and were not before the higher court.

In the Revised Statutes it is enacted as follows (omitting such parts of the sections as are not necessary to the proper consideration of this case):

SECTION 3942. The Postmaster General may enter into contracts for carrying the mail with railway companies without advertising for bids therefor.

SECTION 3956. No contract for carrying the mail shall be made for a longer term than four years.

SECTION 3997. The Postmaster General shall arrange the railway routes on which the mail is carried * * * so that each railway company shall receive, as far as practicable, a proportionate and just rate of compensation, according to the service performed.

SECTION 3998. The pay for carrying the mail on any railway of the first class shall not exceed three hundred dollars per mile
21 per annum; on any railway of the second class it shall not exceed one hundred dollars per mile per annum, and on any railway of the third class it shall not exceed fifty dollars per mile per annum; but if one-half of the service on any railway is required to be performed in the night time, the Postmaster General may pay twenty-five per centum in addition to the above maximum rates.

SECTION 4000. Every railway company carrying the mail shall carry on any train which may run over its road, and without extra charge therefor, all mailable matter directed to be carried thereon, with the person in charge of the same.

SECTION 4001. All railway companies to which the United States have furnished aid by grant of lands, right of way, or otherwise, shall carry the mail at such prices as Congress may by law provide; and until such price is fixed by law the Postmaster General may fix the rate of compensation.

SECTION 4002. The Postmaster General is authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter mentioned.

First. That the mail shall be conveyed with due frequency and speed, and that sufficient and suitable room, fixtures, and furniture in a car or apartment properly lighted and warmed shall be provided for route agents to accompany and distribute the mails.

Second. That the pay per mile per annum shall not exceed the following rates: * *

Under these provisions of law the United States, on the 1st day of July, 1875, contracted with the Chicago, Milwaukee and Saint Paul Railroad Company for transportation of mails over its road for a term of four years, at a rate of compensation graded according to the provisions of R. S., § 4022. The contract further contained the following provision:

9th. That the Postmaster General may discontinue or curtail the service, in whole or in part, whenever the public interests, in his judgment, shall require such discontinuance or curtailment, for any cause, he allowing, as a full indemnity to the contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the amount of service retained and continued.

By the first section of the act of July 12, 1876, Chap. 179, it was enacted—

That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, 1876, for transportation of mails on railroad routes by reducing the compensation to all railroad companies ten per centum per annum from the rates fixed and allowed by the first section of an act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1874, and for other purposes," approved March 3, 1873, for the

transportation of mails on the basis of the average weight. (Richardson's Supplement, 224.)

The provision in the act of March 3, 1873, therein referred to, is the one incorporated into the Revised Statutes as section 4002.

By the thirteenth section of the act of July 12, 1876, it was further enacted—

That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct, shall receive only eighty per centum of the compensation authorized by this act. (Richardson's Supplement, 226.)

The Postmaster General applied the provisions of the act of 1876 to the contract with the Chicago, Milwaukee and Saint Paul Railroad Company. There was a controversy whether the road was subject, as a land-grant road, to the provisions of the thirteenth section of that act. This court decided that it was not a land-grant road (14 C. Cls., 125), and its decision was substantially sustained above. (104 U. S. R., 687.) There was also a contention whether it was subject to the provisions of the first section of the act reducing all rates 10 per centum. On this point our judgment was adverse to the company, and was reversed above. In the opinion which accompanied our judgment we laid down some propositions of law, resting upon others, which, although not stated, were necessarily implied by the course of argument.

22 1. Contracts made by the Executive for the payment of money from the Treasury derived their validity from legislative authority.

Section 3732 of the Revised States codifies this proposition as to some kinds of contracts:

No contract or purchase on behalf of the United States shall be made unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

This principle, which we assumed as the basis of the reasoning by which we reached our conclusion, has not been, and probably will not be, questioned. The Constitution says that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." It provides for the distribution of the work of carrying on the Government in different Executive Departments. Congress has organized departments under the Constitution, and has charged them with the conduct of executive business, and makes appropriations for carrying on that business, and provides accounting machinery in the Treasury for determining how much shall be paid for it, and delegates a portion of its power to this court, authorizing it to render judgments which shall be respected and paid at the Treasury out of a general appropriation for that purpose.

But no one will probably contend that if Congress fails to confer upon the Executive power to expend the public money for a given purpose, it is within the constitutional power of the Executive to bind the United States, either directly or by implication, to pay it for such a purpose, or that the courts should recognize such a contract, and give a judgment upon it to be satisfied under a general appropriation act. Such a case is not to be confounded with one in which it becomes the duty of a court to render judgment against the United States because Congress has failed to make an appropriation to meet payments due under a valid contract, or with one in which the United States has received the benefit or material without a contract under general provisions of law. Confining the expression of opinion to the exercise of the constitutional power by Congress to determine how much money shall be appropriated from the Treasury and for what purposes, we then had and still have no doubt that the absolute control of the money of the United States is in Congress, and that it is the duty of the executive and judicial departments of the Government to observe its will in that respect; and we do not understand that this principle is questioned by the Supreme Court.

2. The contract sued on in that suit was authorized by statute. It was contended on the part of the United States that the Postmaster General had no authority to contract for four years. We decided that the statute gave him that power, and the Supreme Court held that we were right. That officer might have made an absolute contract for that term. Had he done so the decision in the claimants' favor on that point would have terminated the case. He did not do so, however. He made a contract for four years, terminable at any time on notice by the Government of discontinuance of the service, with extra payment for one month. It was the attempt by the Postmaster General to execute this reserved power which raised the issues settled by that suit.

3. While the terms of a valid contract with the United States could not be varied (whether by the Legislature or the Executive) without the assent of both parties, a discontinuance of the service effected under the ninth clause of the contract was not a va-
23 riation. We do not suppose that this holding was erroneous. There is certainly nothing in the opinions of the Supreme Court looking that way.

4. That the notice required by the ninth provision of the contract could be given as effectually by the Legislature as by the Postmaster General, as the agent of the Legislature.

This proposition rests in part upon the first proposition, and in part upon the settled principle that all persons being within the limits of a sovereignty are presumed to know the provisions of public law. Assuming that the legislative will was to govern the disposition of the public moneys, so far as it could lawfully do so without affecting the validity of contracts, we thought that rules of public policy, as well as settled principles, required us to hold that the expression of that will reach the parties directly through the statute, without waiting to percolate through the bureau of an execu-

tive department. A careful examination of the opinions of the Supreme Court in these cases fails to reveal that the judges of that court did not agree with us. On the other hand, it appears to have been recognized as a sound principle in Bradley *vs.* The United States, 98 U. S. R., 104.

5. As a conclusion from the previous propositions we held that the act terminated all contracts which were terminable at the will of Congress, and which Congress intended by the act to terminate. Down to this point there is no appearance that the Supreme Court found this court in error.

6. That Congress intended by the act of July 12, 1876, to reduce by 10 per cent. the mail transportation pay of all railroad companies whose contracts it could lawfully change.

The act directed the Postmaster General to readjust the compensation for transportation of mails on railroad routes by reducing the compensation to all railroad companies. This court was of opinion that Congress, by using the word "all" intended to reach all railroads and all railroad contracts for mail transportation which the Executive could lawfully terminate, leaving the companies to decide whether they would make the new agreement prescribed by Congress or would cease to carry the mails. It necessarily followed from this course of reasoning that the contract of the Chicago, Milwaukee and Saint Paul Railroad Company was terminable; that it was the intent of Congress to terminate it, and that it was abrogated by the act.

The Supreme Court finds us in error in this construction of the statute. In the case of the Chicago and Northwestern Railroad Company (104 U. S., 680), to which we shall soon refer more in detail, and which appears to have been considered with the Chicago and Milwaukee case, it says of this and a similar statute:

Their language may be well satisfied by confining them to cases where no time contracts for service were then in existence, and to contracts thereafter to be entered into. They do not legitimately apply to contracts then existing.

And in the Chicago, Milwaukee and Saint Paul case the Supreme Court says:

This act was not intended to apply to the case of contracts previously made for a term of years not expired when it took effect.

By the act of June 17, 1878, ch. 259 (Richardson's Supplement, 358), it was further enacted:

That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the 1st day of July, 1878, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails 5 per centum per annum from the
24 rates for the transportation of mails on the basis of the average weight fixed and allowed by the first section of an act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876.

At the term of court following that in which judgment was en-

tered in the case of the Chicago, Milwaukee and Saint Paul Railway Company the case of the Chicago and Northwestern Railway Company was heard and decided. (15 C. Cls. R., 232.)

The contract in that case was for the transportation of the mails for four years from July 1, 1875, and contained a clause in every respect identical with provision 9 in the other contract.

The Government claimed to apply to this contract the provisions of the act of June 17, 1878, as well as those of section 1 of the act of July 12, 1876. It also appeared that a part of the claimants' road was a land-grant road. The Government further contended that the contract was subject to the provisions of the thirteenth section of the act of July 12, 1876.

This court reaffirmed the doctrines expressed in the previous case, and applied them to the act of June 17, 1878. Assuming this view to be correct, it necessarily followed that it was immaterial whether the terminable contract was made with a land-grant road or a non-land-grant road. In our opinion it was equally terminable and equally terminated in either case.

It was not necessary to go beyond this; but we did, and we held that the statute, codified in sections 3942 and 3946 of the Revised Statutes, "which authorizes the Postmaster General to make mail transportation contracts generally for periods of four years, does not operate to relieve the land-grant roads from the terms and conditions of their antecedent grants."

It seemed to us too clear for argument that when Congress, in 1872, as part of a general statute "to revise, consolidate, and amend the statutes relating to the Post Office Department" (17 Stat. L., 283), enacted that "no contract for carrying the mail shall be made for a longer term than four years" (Ib., 315, § 256), and that "the Postmaster General may enter into contracts for carrying the mail for railway companies without advertising" (Ib., 316, § 265), and when it consolidated these enactments into the sections of the Revised Statutes already quoted, it had no purpose of surrendering the power to fix rates for mail transportation which it had reserved to itself as a condition of the valuable grants which it had made to the land-grant roads. It seemed to us that the true rule of construction to be adopted was the one laid down by this court in Wilcox's case (12 C. Cls. R., 495), and textually adopted by the Supreme Court in the same case (95 U. S. R., 664), that—

No construction should be accepted which would defeat the clearly established policy of Congress, by giving substantial force to language not material to the subject-matter legislated upon, and by establishing an incidental and accidental change of the law beyond the contemplation of the legislators.

We had no doubt that it was not the purpose of the individual legislators who voted for the act of 1872, and therefore could not be taken to be the will of the aggregate body, that Congress by those sections was surrendering its reserved power. It seemed to us that there was enough for the act to operate on without giving it that construction. But the Supreme Court thought otherwise. It said:

The contract was an exercise of the reserved power, with an

added obligation not to exercise it otherwise for the period agreed on.

25 This court was further of the opinion that there was no inequity in terminating this terminable contract, in the resumption by Congress of its suspended power, and in calling upon companies which had voluntarily assumed the duty of transporting the mails at prices fixed by Congress to comply with the terms upon which they had accepted the benefits conferred upon them. The Supreme Court held us in error in this respect. It said:

When Congress authorized the Postmaster General to fix the price by contract within specified maximum rates, and for a period of four years, it was an agreement on the part of the United States that the stipulated compensation should not be withheld during that period, which it could not refuse to perform without a breach of the public faith.

Two other questioks arose in this case which had not arisen in the other case.

In the first place, the Chicago and Northwestern Company had protested against the reduction, while the other company had made no protest. This court said of this that the Postmaster General had no discretion to bind Congress, and that a notice by protest to him in face of the statute was not notice that could operate in favor of the claimants or bind the Government. The Supreme Court said that the Postmaster General's construction of the law was erroneous, and it made no difference whether the company had protested against it or not.

In the next place, the contract was not a simple contract for the transportation of the mails. It was a contract for transporting them in a particular manner—in special cars, lighted and warmed, and fitted so as to accommodate traveling postal agents, according to the provisions of section 4002 of the Revised Statutes.

This court was of opinion that while a land-grant road had undertaken as the condition of the grant to transport mails at prices fixed by Congress, it had not undertaken to perform the other special service. We thought that such companies were as free to make or refuse to make such contracts as the non-grant railroad companies are. And holding, as we did, that the contract was terminable, and that it was abrogated by the statutory notice, we further held, as we had held in the other case, that the continuance to perform the service after the notice operated as an acceptance of the terms for a new contract offered by Congress. But the Supreme Court, if we rightly understand its language, says we are wrong in thinking that land-grant roads are not required to transport mails in the manner called for by section 4002. It says that the company "was bound by its contract to perform the service, and its performance was demanded." It is not to be supposed that the highest court intends to assert that the United States could insist upon the performance of the contract sued upon at a less rate of compensation than the Postmaster General had agreed to pay. It must, therefore, be taken that the contract referred to in the opinion of that court was the contract in the condition attached to the land grant, and that the

service referred to was the special service provided for by the written contract.

This careful review constrains us to the opinion that the points suggested by the Postmaster General must have been considered by the Supreme Court. It is the prerogative of that court to control the will of subordinate Federal courts.

Hereafter the first section of the act of July 12, 1876, in accordance with the expressed opinion of the Supreme Court, is to be construed as if it read:

26 The Postmaster General is hereby authorized and directed to readjust the compensation to be paid from and after July 1, 1876, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of the mails 10 per centum, except such railroad companies as have now time contracts for mail service; but no such time contract shall be affected by this act, whether the same is terminable on notice or not.

For the same reason we must construe the thirteenth section of that act as if it read:

Railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such prices as Congress should by law direct, shall receive only 80 per centum of the compensation authorized by this act; but this provision shall not apply to land-grant railroads which have now time contracts for mail service, terminable or otherwise.

That court directs us to give to sections 265 and 256 of the act passed in 1872, to revise, consolidate, and amend the statutes relating to the Post Office Department, and to the corresponding sections in the Revised Statutes, the same significance as if they read:

The Postmaster General may enter into contracts for carrying the mail with railway companies, provided that no such contract shall be made for a longer term than four years, and that every time contract therefor made with a company operating a land-grant railroad shall be taken to be the exercise by Congress of its reserved power to fix rates for carrying the mails.

And for us and the Postmaster-General, in obedience to the same will, section 4001 of the Revised Statutes is to be construed as if it read:

All railway companies to which the United States have furnished aid by grant of lands, right of way, or otherwise, shall carry the mail at such prices as Congress may by law provide, unless the Postmaster General shall, under the provisions of sections 3942, 3956, and 4002, have made a time contract for such service, terminable or otherwise; in which case the right of Congress to fix the rate shall be suspended until the expiration of the term of the contract.

The judgment of the court is that the claimants have and recover of the defendants the sum of $139,080.05.

Drake, J. C., was absent when this cause was heard, and took no part in the decision.

27 V. *Final Judgment of the Court.*

At a Court of Claims held in the city of Washington, on the 23d day of April, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, The Saint Paul and Duluth Railroad Company, be dismissed.

28 VI. *Application of Claimant for and the Allowance of Appeal.*

And now comes the said claimant in the above-entitled cause, by J. F. Farnsworth, its attorney, and prays an appeal from the judgment of said court to the Supreme Court of the United States.

J. F. FARNSWORTH,
Attorney for Claimant.

Filed June 15, 1883.

AT CHAMBERS, *June* 15, 1883.

Allowed.

C. D. DRAKE, *Chief Justice.*

29 In the Court of Claims.

THE SAINT PAUL AND DULUTH RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 12403.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the claimant for the allowance of appeal to the Supreme Court of the United States, and of the allowance of said appeal by Chief Justice Drake.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this twentieth day of June, A. D. 1883.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Court of Claims. No. 520. The St. Paul and Duluth Railroad Company, appellant, *vs.* The United States. Filed 20th June, 1883.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
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112-133

Supreme Court of the United States.

THE SAINT PAUL AND DULUTH RAILROAD COMPANY, *Appellant*,
versus
THE UNITED STATES.

October Term, 1884.
No. 520.

APPEAL FROM COURT OF CLAIMS.

BRIEF FOR APPELLANT.

The record in this case shows that in the year 1875 the "Lake Superior and Mississippi Railroad Company" entered into a written contract with the Postmaster-General for the transportation of the mails between St. Paul and Duluth, by railroad, for the term of four years, commencing on the first day of July of that year, and ending June 30, 1879.

The contract is like the one in the case of the "Chicago and Northwestern Railway Company." (104 *U. S. R.*, 680.)

Prior to the making of this contract, namely, January 1st, 1869, the said "Lake Superior and Mississippi R. R. Co." executed a deed of trust of its road and all manner of its property, together with its franchises, including the franchise to be a corporation, and income, then owned and thereafter

to be acquired, to certain parties to secure its indebtedness. (*See Record, pp.* 11-12.)

In the year 1877, March 8th, judgment of foreclosure and sale of the said road and property was entered by the United States Court for the District of Minnesota, and the same was sold to a committee in trust for the bondholders, creditors and stockholders of said company, which was confirmed by the Court on the 12th day of June, 1877; and thereupon, in accordance with the laws of Minnesota, the said purchasers organized themselves, on the 27th of June, into the corporation plaintiff in this case, and conveyance was made to the plaintiff of the said property. (*See Record, pp.* 13, 14.)

The mail service required by the contract was duly performed by the said "Lake Superior and Mississippi R. R. Co." and its successor, the plaintiff, during the said term of four years.

The Post-Office Department deducted from the compensation for the transportation of the mails on said road, the sum of $12,141.36, claiming the right to do so under the acts of Congress of July 12, 1876, and of June 17, 1878. (*Record p.* 10. *Third finding.*)

The case is precisely like that of the "Chicago and Northwestern Railway Company," above cited, except as to change of the *name* of the Company contracting.

Assignment of Error.

Appellant assigns for error, that the Court below should have rendered judgment for the plaintiff for the sum of $12,141.36.

This case was heard by but three of the Judges of the Court of Claims, who decided that the plaintiff could not recover reductions from the contract price made *after* the change of the name of the company, and the plaintiff "failed to convince" all the three judges who heard the case, that it had the right to recover the reduction made *before* the change of name.

1. As to this branch of the case, I do not deem it necessary to trouble the Court with any argument, or authorities other than those cited by the Court of Claims.

For, if the plaintiff cannot recover this debt, no party can, as the contracting corporation only exists in the plaintiff.

2. Has the plaintiff a right to recover for the reductions made from the contract price, after the change of the name of the company? We think it has.

The performance of the services by the plaintiff for the remaining portion of the contract term could only be required by the Department by virtue of *a contract*. No other contract than the one set out in the record was made in any form; and the Department evidently regarded this contract as still obligatory upon the plaintiff as the successor of the former Company.

It had no re-weighing of the mails. It made no change in the character of the service, and it gave the plaintiff no notice of any reduction of the pay until August 28th, 1878, when a notification was sent to the superintendent of the road that the Department claimed the right to make a reduction under the Act of June 17, 1878. (*Record*, *p.* 10.)

Under the mortgage and sale and reorganization of the company, the contract with the Post-Office Department for the transportation of mails for an unexpired term was *property* which passed to the plaintiff, and the plaintiff took it as it took the other property, subject to obligations and liens which had been legally made by its predecessor.

The mortgage was on record, as were the orders of the Court for the sale of the property and the confirmation of the sale. These records were notice to all the world of their contents.

This is in no sense such an assignment of a contract as to vitiate it, or of the claim so as to prevent the plaintiff from enforcing it in the Court of Claims. To say otherwise would be to say that a party shall not give security for the payment of its debts, by pledge of its property and income; or if it should do so, it must make no time contracts!

The learned Judge who delivered the opinion of the court below cites this section of the statutes:

SEC. 3737. No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred so far as the United States are concerned.

That statute is not applicable. The transfer of this contract was by order of the United States Courts. The *mortgage* was made long before the contract.

J. F. FARNSWORTH,
Counsel for Appellant.

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In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE SAINT PAUL, &c., RAILROAD Company
v.
THE UNITED STATES.
No. 520.

BRIEF FOR THE UNITED STATES.

This case is submitted upon the findings and opinion stated in the record. The contention upon behalf of the Government is so thoroughly and clearly stated in that opinion that it would be excess to present it in any guise *de novo*.

S. F. PHILLIPS,
Solicitor General.